

# Exhibit 10

Foster, Charles 9-27-04.txt

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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MASTER CONSOLIDATED CASE  
SILICA (AND MIXED DUST)/  
ASBESTOS DOCKET  
Judge Harry A. Hanna/Leo M. Spellacy

Couts v. American Optical Corp., et al.)

Case No. 466469

Diley, et al. v. American Optical Corp., et al.)

Case Nos. 469011-469030

Dettmer, et al. v. American Optical Corp., et al.)

Case Nos. 468985-469010

Harrison, et al. v. American Optical Corp., et al.)

Case Nos. 469126-469169

Whitlow, et al., v. American Optical Corp., et al.)

Case Nos. 469166-469169

Bellito, et al. v. American Optical Corp., et al.)

Case Nos. 469152-469165

Damico, et al. v. American Optical Corp., et al.)

Case Nos. 469099-469125

Fansler v. American Optical Corp., et al.)

Case No. 469429

Ross v. Allied Mineral Prods., et al.)

Case No. 474018

Seward, et al. v. Allied Mineral Prods., et al.)

Case Nos. 475702-475704

Wolfe, et al. v. Allied Mineral Prods., et al.)

0002

Young, et al. v. Allied Mineral Prods., et al.)

Case Nos. 475631-475668

Agalianos, et al. v. Best Sand Corp.)

Case Nos. 478997-479034

Ash, et al. v. Best Sand Corp.)

Case Nos. 499450-499460

Beach, et al. v. Best Sand Corp.)

Case Nos. 482220-482251

Applegarth, etc. v. Air Liquide America)

Case Nos. 515434-515483

Jenkins v. Foseco, Inc.) Case No. 519507

Cash, et al. v. Air Liquide America)

Case Nos. 516415-516438

Brown, et al. v. Air Liquide America)

Case Nos. 524514-524557

Allen, et al. v. Air Liquide America)

Case Nos. 524558-524607

Burkeen, et al. v. Air Liquide America)

Case Nos. 522891-522925

Foster, Charles 9-27-04.txt  
Ellis, et al. v. Air Liquide America)  
Case Nos. 523610-523659  
Arnold, et al. v. Air Liquide America)  
Case Nos. 530935-530958  
Gailey, et al. v. Air Liquide America)  
Case Nos. 530905-530934  
Hitchcock v. Air Liquide America) Case No.532705

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The resumption of the Rule 30(b)(5) discovery  
deposition of Respiratory Testing Services/Charles  
E. Foster taken at the Bienville Club, 107 St.  
Francis Street, 34th Floor, Mobile, Alabama, on the  
27th Day of September 2004 commencing at  
approximately 10:20 a.m.

A P P E A R A N C E S

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Foster, Charles 9-27-04.txt

11 in the process can they turn down the process?

12 A. No -- yeah, they can. But I've had them  
13 call and have their attorneys pay us for the  
14 screening.

15 Q. Would you consider the client for RTS is  
16 really the lawyers that sponsor the screenings?

17 A. Say that again, now.

18 Q. RTS' real client is the lawyers who  
19 sponsor the screenings?

20 A. The lawyers are the clients?

21 Q. Yes, for RTS?

22 A. They are the ones that pay us for the job.

23 Q. Right. You work for the lawyers?

0146

1 A. In essence.

2 Q. And, in essence, in working for the  
3 lawyers, it's your job to go get the lawyers their  
4 clients?

5 A. Not necessarily, no.

6 Q. Well, don't you send out union mailers or  
7 mailings to the unions to go get clients?

8 A. I mean, you read the thing a while ago  
9 that they send me to talk to these people.

10 Q. And the lawyers do that?

11 A. Yes.

12 Q. And the lawyers pay you to send mailings  
13 out to the union members to get them to the  
14 screenings?

15 A. Yes.

16 Q. The lawyers pay you to go have meetings  
17 with union officials at meetings where you make a  
18 presentation about the testing process?

19 A. In some cases, but not in all.

20 Q. And the lawyers pay you for the tests?

21 A. Yes.

22 Q. Would you consider or do you know whether  
23 or not RTS has a physician/patient relationship

0147

1 with these individuals that you test?

2 A. Ask that again.

3 Q. Do you consider whether or not RTS has a  
4 physician/patient relationship with the folks that  
5 you test?

6 A. For the positive, they do.

7 Q. For the positive you do? For the  
8 negatives you don't consider there is a  
9 physician/patient relationship?

10 A. No.

11 Q. Why do you consider --

12 A. Unless there is an abnormality.

13 Q. Unless there is an abnormality, in terms  
14 of a cancer?

15 A. Well, you know, we are not going to call  
16 it cancer. A nodule or whatever. Then the doctor  
17 talks to them and tells them they have an  
18 abnormality.

19 Q. If a doctor finds a positive and a full  
20 medical procedure is done, then you believe that  
21 RTS has a physician/patient relationship with that  
22 individual?

23 A. The doctor has a -- state that again, now.

0148

1 Q. The question is, you, RTS, considers there

Foster, Charles 9-27-04.txt

2 to be a physician/patient relationship if the  
3 individual is tested positive?

4 A. With the doctor.

5 Q. With the doctor?

6 A. With the physician, yeah.

7 Q. Now, after the individual sees the testing  
8 manager, if I am correct, the next person that they  
9 see is the sign-in person; is that right?

10 A. No.

11 Q. What happens after they first see the  
12 testing manager? who --

13 A. Oh, the testing manager, yes.

14 Q. Then after the testing manager, they go  
15 see who? The sign-in person?

16 A. There would be a sign -- a person to sign  
17 them in. In most cases, they'll be sitting -- you  
18 know, this area that we talked about charging for,  
19 different areas, sit here and someone will get you.  
20 And they come in and get their name and write it  
21 down. And then they call them and then they get  
22 all that.

23 Q. All right. What does the sign-in person

0149 1 do with this individual? What do they make them  
2 sign in? A sign-in sheet?

3 A. Yeah, they sign in. They go over the  
4 history with them and they get them to sign it,  
5 saying that that is true to the best of their  
6 knowledge.

7 Q. Okay. So they sign in probably a sign-in  
8 sheet as well as the work history sheet?

9 A. Well, a work history sheet is what they  
10 sign.

11 Q. After they finish signing in the work  
12 history sheet, then do they go get an X-ray shot?

13 A. They get X-rayed after they have signed  
14 that they have no abnormality to keep them from  
15 X-ray.

16 Q. Okay. And if they've signed those sheets,  
17 if I am clear, they have now signed a sign-in  
18 sheet, an exposure history sheet and a form saying  
19 that they have no abnormality or no reason that  
20 they can't be X-rayed?

21 A. Well, the exposure history and the sign-in  
22 sheet is the same thing.

23 Q. Okay. So let's go back. They sign in the

0150 1 exposure history; right?

2 A. Yes.

3 Q. And then another form that says they can  
4 be X-rayed?

5 A. X-rayed or PFT.

6 Q. And after they do that, then they are  
7 X-rayed by one of your technicians?

8 A. Yes.

9 Q. In one of the X-ray trailers?

10 A. Yeah.

11 Q. Or by Dr. Netherland, chiropractor  
12 Netherland out of Mississippi?

13 A. No.

14 Q. Did you use Chiropractor Netherland ever  
15 up in Ohio?

16 A. No.

Foster, Charles 9-27-04.txt

17 Q. Before they are actually X-rayed, are they  
18 seen by a physician at any point?

19 A. No.

20 Q. Is there anything in writing from a  
21 physician requesting that they go forward with the  
22 X-ray, other than what we have looked at, for  
23 example, on Exhibit 20 with Dr. Gaziano?

0151

1 A. Is there any what now?

2 Q. Is there anything in writing from a  
3 physician before they get an X-ray that the  
4 individual should go forward with an X-ray?

5 A. The only thing is the way I said mark  
6 those forms. I mean, they might -- whatever they  
7 mark it, PFT or X-ray eval or whatever.

8 Q. Something like Exhibit 19, if I can show  
9 that to you?

10 A. That is an abnormality form there. They  
11 wouldn't go any further by signing that.

12 Q. Do you have Exhibit 20 over there by  
13 chance? Here it is. Never mind.

14 I'll show you Exhibit No. 20, which has  
15 previously been identified. That is the form that  
16 the doctor would go ahead and order an X-ray?

17 A. On their work history more so than that.

18 Q. And after an X-ray is shot, then what  
19 happens to that individual? The X-ray is then  
20 taken on-site; correct? To a B-reader?

21 A. Yes.

22 Q. Is that right?

23 A. By a B-reader. Well, the X-ray is taken

0152

1 by an X-ray technician.

2 Q. Okay. And then after the X-ray is shot,  
3 it is then given to a B-reader?

4 A. Right.

5 Q. And the B-reader is on-site; is that  
6 correct?

7 A. Yes.

8 Q. And on-site, the B-reader evaluates that  
9 film?

10 A. Yes.

11 Q. As positive or negative?

12 A. Yes.

13 Q. Does the B-reader, in your opinion, have a  
14 physician/patient relationship with that individual  
15 or not?

16 A. Not if he doesn't see anything on his  
17 X-ray.

18 Q. What if he sees anything on his X-ray?

19 A. If he sees an abnormality, yes, he does.  
20 He brings him in and talks to him and tells him he  
21 is referring him to his own personal physician.  
22 And he could be negative as far as asbestos or  
23 silicosis go.

0153

1 Q. If the individual is found negative by the  
2 B-reader, is a B-read form filled out for the  
3 negative individual?

4 A. Yeah. The B-read form is filled out with  
5 a narrative report.

6 Q. And the ILO form is filled out as well?

7 A. Yeah.

Foster, Charles 9-27-04.txt

8 Q. Plus a narrative report?

9 A. Yes.

10 Q. So for a negative --

11 A. When you're saying a B-reader form,  
12 B-reader form and ILO is the same thing.

13 Q. I understand. There is also a narrative  
14 as well?

15 A. Well, there is a narrative. But you said  
16 three forms. And there is not three forms. It's  
17 two.

18 Q. All right. Two forms are a narrative and  
19 an ILO form; is that right?

20 A. Yes.

21 Q. So if someone is found negative by RTS we  
22 would have for that individual a work history form;  
23 correct?

0154

1 A. Right.

2 Q. A form or a piece of paper from the doctor  
3 indicating the individual should take an X-ray,  
4 which could be on the work history form; right?

5 A. Right.

6 Q. A B-read/ILO form; correct?

7 A. All right.

8 Q. And a narrative?

9 A. Right.

10 Q. Is there any other paperwork that is  
11 completed on a negative?

12 A. Yes, they sign one more form, saying that  
13 they are capable of doing a PFT or an X-ray.

14 Q. Is there anything else done on that  
15 negative person?

16 A. No.

17 Q. What happens to that paperwork and the  
18 film for a negative?

19 A. It's shipped to the law firm.

20 Q. All of it is shipped?

21 A. All of it is shipped.

22 Q. Does RTS maintain any paperwork for  
23 negatives?

0155

1 A. We have copies of -- we maintain copies of  
2 positives or negatives. No, we don't maintain any  
3 of the originals.

4 Q. Do you maintain copies of the file  
5 materials for a negative?

6 A. Yes.

7 Q. The only thing you don't keep on a  
8 negative, that the attorneys may have that you  
9 don't have, would be the actual x-rays?

10 A. The X-ray and the original forms, the  
11 original stuff -- documentation.

12 Q. You have copies of everything?

13 A. Yes.

14 Q. If the individual is determined positive  
15 by the B-reader, then if I understood the process  
16 correctly, that individual goes forward and does a  
17 medical history form?

18 A. Yes.

19 Q. And the medical history form is either  
20 filled out by a girl by the name of Debbie --

21 A. Now.

22 Q. Now, or your testing manager?

Foster, Charles 9-27-04.txt

8 Q. Plus a narrative report?  
9 A. Yes.  
10 Q. So for a negative --  
11 A. When you're saying a B-reader form,  
12 B-reader form and ILO is the same thing.  
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14 as well?  
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16 three forms. And there is not three forms. It's  
17 two.  
18 Q. All right. Two forms are a narrative and  
19 an ILO form; is that right?  
20 A. Yes.  
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22 would have for that individual a work history form;  
23 correct?  
0154  
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3 indicating the individual should take an X-ray,  
4 which could be on the work history form; right?  
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0155  
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5 materials for a negative?  
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7 Q. The only thing you don't keep on a  
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10 A. The X-ray and the original forms, the  
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15 by the B-reader, then if I understood the process  
16 correctly, that individual goes forward and does a  
17 medical history form?  
18 A. Yes.  
19 Q. And the medical history form is either  
20 filled out by a girl by the name of Debbie --  
21 A. Now.  
22 Q. Now, or your testing manager?



Foster, Charles 9-27-04.txt

23 A. Charlie Brooks.  
0156  
1 Q. Is that right?  
2 A. Yes.  
3 Q. Or in the past, your testing managers?  
4 A. Yes.  
5 Q. After you fill out this medical history  
6 form, then the individual is sent in for a  
7 pulmonary function test?  
8 A. Yes.  
9 Q. And after the pulmonary function test is  
10 completed, the individual is then routed over to  
11 the physician?  
12 A. Yes.  
13 Q. And at that point, the physician does his  
14 examination?  
15 A. And interpretation of the PFT.  
16 Q. And after the PFT interpretation, physical  
17 examination is done, then the individual is taken  
18 to some type of last process, for lack of a better  
19 term?  
20 A. Well, he can go to a lawyer. If he has  
21 already talked to a lawyer, he will go home. He or  
22 she will go home.  
23 Q. For the screenings in Ohio in 2000, with  
0157  
1 the Jackson, Taylor firm, did the lawyers meet with  
2 the individual at the beginning of the screening or  
3 at the end?  
4 A. I don't know. I don't remember that.  
5 Q. Do the B-readers ever take the films with  
6 them, away from the screening, back to their  
7 offices?  
8 A. I answered that a while ago. I said some  
9 do and some don't.  
10 Q. Does Dr. Oaks do that?  
11 A. I don't recall.  
12 Q. When you have had screenings with Dr. Oaks  
13 doing the B-reads, is there a pulmonologist or  
14 another physician there doing the physical  
15 examinations?  
16 A. I don't recall.  
17 Q. Do you recall whether Dr. Oaks usually  
18 works in tandem with Dr. Jose Roman?  
19 A. In the South he did. But he didn't in the  
20 North. He did in Mississippi and Alabama.  
21 Q. How about in Ohio? Who did Dr. Oaks work  
22 with?  
23 A. I don't know. I don't know that he did.  
0158  
1 I don't remember.  
2 Q. Do you recall whether Dr. Ballard ever  
3 worked with you in Ohio?  
4 A. No, I don't.  
5 Q. The answer is no or you don't recall?  
6 A. I don't recall.  
7 Q. Do you know if Dr. Ballard has worked with  
8 Dr. Roman in conjunction with RTS in terms of a  
9 screening?  
10 A. In Ohio?  
11 Q. Yes. Anywhere.  
12 A. Yeah, they have worked in conjunction  
13 anywhere.